THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.21731 of 2006

23-10-2006

Between:-

R. Dashrath Mohan Lal

Petitioner

And

Special Deputy Collector,
Land Acquisition General,
Collectorate Compound,
Nampally, Hyderabad and another.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.21731 of 2006

Oral order:

What is presented for adjudication in this writ petition is a disputed question of fact; whether the Andhra Pradesh Housing Board is in possession of land in excess of what it had acquired from one Rai Bindu Basni Prasad (Prasad) pursuant to an agreement from the said individual and his family dated 19-01-1961 whereunder the Hyderabad Housing Board acquired land in an extent of Ac.60-00 belonging to Prasad and his family. The petitioner claims to be a member of the Rai Bindu Basni Prasad lineage and to entitlement to his property which was occupied in excess of its entitlement by the Andhra Pradesh Housing Board or its predecessor – The Hyderabad Housing Board.

According to the petitioner, Prasad addressed the

District Collector in 1962 requesting demarcation of land left over after acquisition by the Housing Board. Thereafter, the District Collector furnished a certificate eventually and on 19-03-1971 addressed the Housing Board that it had encroached cumulatively an extent of Ac.04-29 gts in survey Nos. 107, 58, 59 and 61 of Bahlookhanguda, Yousufguda and Ameerpet. On the basis of this letter of the District Collector addressed to the Chairman, Housing Board, the petitioner infers a certification by the Collector that the Housing Board has encroached into Ac.04-29 gts., of Prasad's land to which the petitioner claims entitlement and to a corollary obligation of the Housing Board to vacate the land in its occupation in excess of what was acquired from Prasad in 1961.

The petitioner made representations to the Housing Board thereafter and the representations having not been responded to, filed W.P.No.23687 of 2002 seeking a direction to the Housing Board to dispose of his representation dated 19-07-2002. This court, by an order dated 06-01-2003, directed the respondents in the writ petition to dispose of the representation of the petitioner within three months. The petitioner's representations were not disposed of within the time

stipulated by this court. Thereupon, the petitioner instituted C.C.No.1424 of 2003 against the respondents for violating the order of this court dated 06-03-2001 in W.P.No. 23687 of 2002. The contempt case was disposed of on recording a representation on behalf of the respondents that the petitioner's representations were disposed of on 22-12-1973 and again on 31-10-1980 and 20-01-1983. After disposal of the contempt case, the petitioner again started corresponding with the Housing Board on his grievance.

The Housing Board eventually and by the letter dated 05-01-2004 addressed the petitioner. *Inter alia*, the Housing Board's letter asserts that the possession of the land was taken on 14-04-1962 and therefore any discrepancies in the extents of land in the possession of the Housing Board cannot be considered at this belated stage, particularly as no objections were lodged as regards the correct area of land, amount of compensation and apportionment by the Collector at the time of the Award inquiry. Specifically, the Housing Board contended (in its letter dated 05-01-2004), that the petitioner's claim is factually incorrect as the Housing Board took possession of the land through the Land Acquisition Collector, who had satisfied himself about the actual area being only Ac.60-00 and compensation was also paid accordingly.

Allegations of encroachment of land by the Housing Board in excess of what was acquired is clearly and unequivocally denied.

In the aforesaid circumstances, there is *in presenti* a factual dispute, which ought not to be adjudicated under Article 226 of the Constitution of India. Such disputes are more appropriately resolved by the civil court of competent jurisdiction, unless be any special Tribunal invested with the powers to adjudicate such disputes between the petitioner and the Housing Board under any law for the time being in force.

On the aforesaid analysis, the writ petition is dismissed. The petitioner is however at liberty to pursue his remedies before the appropriate forum invested with the power, authority and regular jurisdiction to adjudicate upon disputed questions of fact including the civil court of competent jurisdiction, if such be the forum.

Nothing in this order shall be construed as an expression of this court on the merits of the petitioner's claim or any potential defences by the respondents as to the petitioner's assertions in this writ petition.

The writ petition is dismissed as above at the stage of admission. There shall be no order as to costs.

GODA RAGHURAM, J

Dated:23-10-2006
Pvks/*